IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

Sheonarayan & ors. vs. Shambhoo Singh & ors.

S.B. Civil Second Appeal No.80/1985 against the judgment and decree dated 1.12.1984 passed by the learned Addl. District Judge, Bhilwara in Civil Appeal No.41/1983.

Date of Judgment: March 08, 2006.

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

Mr. Manish Shishodia for the appellants.
Mr. B.N. Kalla for the respondents.

BY THE COURT:

This appeal is by the plaintiffs. The appellants suit was decreed partly by the trial court as the trial court declared that the plaintiff has right to have the way for Aaraji no. 48/1 from portion ABCD but dismissed the suit of the plaintiffs for another way for the same Aaraji no.48/1 which was claimed by the plaintiffs on the ground that during rainy season, the other way is not available to them. The trial court held that the plaintiffs failed to prove that the way marked as अबसदयरल is the only way.

According to the learned counsel for the appellants though the

suit of the plaintiffs was dismissed for the same agricultural field having Aaraji no.48/1 and his right of way from the area marked ABCD in the map has been recognised but the courts below committed serious error of fact in denying the relief as claimed in issue no.2. It is submitted that the two courts below have not properly appreciated the facts of the case and the evidence of the parties.

The respondents also submitted cross-objection against the decree which has been granted by the two courts below. According to the learned counsel for the respondents, the plaintiffs failed to prove their right as claimed by them on the basis of their easementary right. It is submitted that the plaintiffs came with totally a false case of having a way since last more than 100 years. It is submitted that the two courts below committed error of law in recognising the way from the land marked ABCD.

I considered the submissions of the learned counsel for the parties and perused the reasons given by the two courts below.

At the out set, it may be stated that the substantial question of law as framed may be a question of law but the very foundation of the question of law is the fact and that is whether plaintiffs have no other way except the way अबसदयरल during rainy season ? The two courts below carefully considered the evidence of the parties and surrounding circumstances and thereafter decided question of act that the way as

claimed by the plaintiff for the Aaraji no.48/1 and marked ABCD is the way which is being used by the plaintiffs, whereas the plaintiffs failed to prove that the way as claimed by them and marked as अबसदयरल is not the only way for taking their bullock-cart to their field. Both the learned counsel could not point out any of the misreading of the evidence or any lawful reason with the help of which this Court can interfere in such finding of fact. It is settled law that the finding of fact recorded by the first appellate court can only be reversed within the parameters within which the High Court can interfere. In view of the above, I do not find any reason to re-consider and re-appreciate all oral and documentary evidence.

In view of the above, the appeal as well as the cross-objection are dismissed.

(**PRAKASH TATIA),J.**

mlt.